alternatives for a [relevant] product."[85] We further explained that "[t]his approach allows assessment of the market power of a particular carrier or group of carriers based on unique market situations by recognizing, for example, that certain carriers may target particular types of customers, provide specialized services or control independent facilities in specific geographic areas."[86]

52. As discussed in greater detail below, we identify three relevant *end-user markets* that are likely to be affected by the merger of BT and MCI: (1) U.S. local exchange and exchange access service; (2) U.S.-U.K. outbound international service; and (3) global seamless services. In addition, we identify six relevant *input markets*: (1) international transport between the United States and United Kingdom; (2) U.K. cable landing station access; (3) U.K. backhaul; (4) U.K. intercity transport; (5) U.K. local terminating access services; and (6) U.K. local originating access services.

1. End-User Markets

a. U.S. Local Exchange and Exchange Access Services

53. The first end-user market that we identify as relevant to our merger analysis is local exchange and exchange access services in the United States. In the *Bell Atlantic/NYNEX Order*, we treated local exchange and exchange access services as a relevant product market separate from interstate, interexchange, long distance service.[87] We reaffirm our finding that these services should be treated as a separate relevant market, because we find no close demand substitutes for these services. To the extent that the merger may affect the competitive conditions for U.S. local exchange and exchange access services, this market is relevant in our assessment of whether the merger is in the public interest.

b. U.S.-U.K. Outbound International Services

54. A second market that is relevant to our analysis of this merger is the market for U.S.-U.K. outbound international services. Identifying this as a separate relevant market is

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[85] *Bell Atlantic/NYNEX Order* at ¶ 54.

[86] *Id.* (footnote omitted).

[87] *Id.* at ¶ 51.

consistent with past Commission decisions, in which the Commission found each international route between the United States and a foreign country to be a separate geographic market.[88]

55. We recognize that this conclusion may appear at odds with our finding in the *LEC In-Region Interexchange Order* that we should aggregate point-to-point markets only where we find that customers face similar competitive choices.[89] More specifically, it could be argued that we should identify separate relevant markets between each U.S. incumbent LEC region (including each BOC region) and the United Kingdom, because the competitive choices facing customers will vary among regions. We believe, however, that, over the time frame we are considering,[90] all the BOCs, GTE, and other major independent LECs will have the opportunity to offer outbound international service originating in their in-region territory and terminating in the United Kingdom.[91] Because we believe that the BOCs, GTE, and other major incumbent LECs have similar capabilities and incentives, in the absence of contrary evidence, we will treat the competitive choices facing customers in the various incumbent LEC regions as similar. This assumption would change to the extent that incumbent LECs offer out-of-region international services in some cases, but not others. Accordingly, we conclude that, for purposes of analyzing this merger, we can treat all U.S.-U.K. outbound international service as a single relevant market.

c. Global Seamless Services

56. In the *BT/MCI I* and *Sprint Declaratory Ruling* decisions, we recognized that "the global seamless services market . . . is an emerging product market of worldwide geographic scope."[92] In the *Sprint Declaratory Ruling*, we described this market as "consist[ing] of a combination voice, data, video and other telecommunications services that

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[88] *See* International Competitive Carrier Policies, *Report and Order*, 102 FCC 2d 812 (1985), *recon. denied*, 60 RR 2d 1435 (1986).

[89] *See supra* ¶ 51.

[90] *See supra* ¶ 38.

[91] We believe that two considerations will cause major incumbent LECs, including the BOCs, to offer such service. First, because the margins on international telecommunications services are generally so high, incumbent LECs will find it profitable to offer such services. *See* International Settlement Rates, *Report and Order*, IB Docket No. 96-261, FCC 97-280 (Aug. 18, 1997) (*Benchmarks Order*). Second, incumbent LECs will feel competitive pressures to offer such services in order to match interexchange carriers that appear likely to offer bundled service packages that include local, long distance, and international services. Consequently, we expect most major incumbent LECs, including all the BOCs and GTE, to offer U.S.-U.K. outbound international service.

[92] *BT/MCI I*, 9 FCC Rcd at 569; *Sprint Declaratory Ruling*, 11 FCC Rcd at 1864.

are offered by a single source over an integrated international network of . . . facilities, and that have the same quality, characteristics, features and capabilities wherever they are provided. This end-to-end service offers the advantage to customers of 'one-stop shopping' and single-source billing."[93] We further noted that, while the principal customers are high-end users such as multinational corporations, individuals may also be customers.[94]

57. We recognize that this global seamless services market is a nascent market even for large business customers, and that it currently may not be available to individual residential customers. Moreover, we realize that, due to differences in network infrastructure and technology and different regulatory regimes among countries, international carriers may find it difficult, or impossible, to offer truly "seamless" coverage to all foreign countries. Despite these qualifications, however, we expect that this market will prove to be one of growing importance over time, and that it is likely to become, if it has not already, a separate relevant market. Moreover, even if we limit our consideration to bundled service offerings, that include local, long distance and international service for both the United States and United Kingdom, we find that this global market is important for many multinational corporations. Accordingly, we find this global seamless services market, even limited to the United States and the United Kingdom, to be relevant in assessing the competitive impact of the merger.

2. Input Markets

58. As previously indicated, there are two reasons why we might consider input markets relevant in assessing the competitive effects of a merger.[95] First, if as a result of the mergers, the merged parties have increased market power over an input, they might be able to raise the price of that input, either unilaterally or through coordinated interaction, which could harm consumers to the extent that, in the absence of regulation in the end-user market, the increased input price would be passed on in the form of higher end-user prices. Second, if as a result of the merger, the merged parties possessed market power over an essential input and, at the same time, competed in the downstream, competitive, end-user market, the merged company conceivably could injure competition by discriminating against unaffiliated producers of the end-user service. Because BT controls numerous inputs in the United Kingdom that other carriers need in order to provide U.S.-U.K. outbound international service and global seamless services, these input markets are accordingly relevant in assessing the competitive effects of the merger of BT and MCI.

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[93] *Id.*

[94] *Id.*

[95] *See supra* ¶ *37.*

59. For U.S.-U.K. outbound international service, BT provides the following inputs that are necessary for carriers to terminate calls in the United Kingdom: (1) international transport between the United States and United Kingdom; (2) U.K. cable landing station access; (3) U.K. backhaul; (4) U.K. intercity transport; and (5) U.K. local terminating access services. Accordingly, because all of these inputs are essential to providing U.S.-U.K. outbound international service, these input markets are relevant in assessing the competitive impact of the merger.

60. The relevant input markets for global seamless services are slightly more complex. Because providers of global seamless services must be able to originate and terminate local, long distance, and international calls in both the United States and the United Kingdom, such carriers must be able to originate all these types of calls in the United Kingdom, where BT exercises significant control over numerous essential inputs. More specifically, various originating services, such as retail local service and originating access service for long distance and international service are inputs into global seamless services, because they are essential parts of the package of services that a multinational corporation is likely to demand as part of a global seamless services package. Accordingly, these input markets are relevant in assessing the competitive impact of the BT/MCI merger.

C. Market Participants

61. Having defined the relevant markets, we next need to identify those entities that appear most likely to be the most significant participants in each relevant market.[96] For this exercise, we will use the framework we further articulated and applied in our *Bell Atlantic/NYNEX* merger decision.[97] From the universe of actual and precluded competitors, we identify the firms that are likely to be the most significant market participants based on an analysis of capabilities and incentives to compete effectively in each relevant market. Of particular interest are those market participants that are likely to be at least as significant a competitive force as either of the merging parties.

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[96] *See 1992 Horizontal Merger Guidelines*, 57 Fed. Reg. at 41555 § 1.3.

[97] *See Bell Atlantic/NYNEX Order* at ¶¶ 58-70.

62. We first identify "actual competitors" in the relevant markets. We define "actual competitors" as firms that are now offering service in the relevant markets[98] and that we expect to be doing so as the relevant markets become more competitive.[99]

63. Consistent with the *Bell Atlantic/NYNEX Order,* we also identify as market participants those firms that have been effectively "precluded" from the market. These "precluded competitors" are firms that are most likely to enter but have until recently been prevented or deterred from market participation by barriers to entry that the pro-competitive measures of the 1996 Act and the WTO Basic Telecom Agreement seek to lower.[100] Such barriers may be legal, regulatory, economic, or operational.[101]

64. Even as the pro-competitive measures are more fully implemented, significant entry barriers will remain. As we stated in *Bell Atlantic/NYNEX*, these barriers may include difficulties in obtaining financial capital; obtaining and retaining the technical, operational, financial and marketing skills necessary to operate as a telecommunications vendor; attracting and holding customers; and regulatory hurdles (*e.g.,* licensing requirements). These remaining entry barriers narrow the universe of significant market participants who will be able quickly to enter and serve the relevant markets. As we articulated in the *Bell Atlantic/NYNEX Order,* we must therefore analyze the capabilities and incentives of each possible competitor to see whether that possible competitor (a) has the capabilities and incentives such that it would be reasonably likely to enter the relevant market as these pro-competitive measures are implemented and (b) would likely exert pressure on competitors in the absence of regulation to lower prices, innovate or upgrade services.[102]

65. From the universe of actual and precluded competitors, we then identify the firms that appear likely to be among the most significant market participants. Specifically, we

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[98] *See 1992 Horizontal Merger Guidelines*, 57 Fed. Reg. at 41555 § 1.31 (Current Producers or Sellers: "[I]dentification of firms that participate in the relevant market begins with all firms that currently produce or sell in the relevant market.").

[99] *Bell Atlantic/NYNEX Order* at ¶ 59. In the *Bell Atlantic/NYNEX Order,* our expectations as to which firms would be offering the relevant products in the relevant markets were based on market openings that would occur as the 1996 Act is more fully implemented.

[100] Barriers to entry represent anything that prevents an entrepreneur from instantaneously creating a new firm in a market. *See* Dennis W. Carlton and Jeffrey M. Perloff, *Modern Industrial Organization*, 919 (2d ed. 1994).

[101] *Bell Atlantic/NYNEX Order* at ¶ 60.

[102] *Id.* at ¶ 61.

determine the market participants that have, or are likely to gain quickly, the greatest capabilities and incentives to compete most effectively in the relevant market. Thus, a firm may be likely to be among the most significant market participants even though it has not yet entered the relevant market. As we indicated in *Bell Atlantic/NYNEX*, these capabilities include access to the necessary facilities, "know how," and operational infrastructure such as sales, marketing, customer service, billing and network management. They also include less tangible capabilities such as brand name recognition in the mass market, a reputation for providing high quality, reliable service, existing customer relationships, or the financial resources to obtain these intangible assets.[103] Another factor is whether the actual or precluded competitor had plans to enter the relevant market or was engaged in such planning. Such plans would be probative evidence of a perception of possession of capabilities and incentives necessary to affect the market.

66. Finally, in determining the most significant market participants from among the actual and precluded competitors, it is particularly relevant to identify which competitors, other than the merging parties, are likely to be as significant a competitor as either of the merging parties.[104]

67. Our analysis relies on a forecast of the probable future (absent the merger) as a base case by which to evaluate the merger. In this case, we assume that BT maintains its 20 percent equity interest in MCI and participates in the current Concert to provide global seamless services together with MCI. Given our finding below that BT's entry into the U.S. marketplace to provide international facilities-based service is in the public interest, we also assume that BT would provide U.S. international facilities-based services *de novo* on the U.S.-U.K. outbound route.

68. As discussed further below, we conclude that MCI is among the most significant market participants in each of the relevant end-user markets (outbound international services on the U.S.-U.K. route, U.S. local exchange and exchange access services, and global seamless service (together with BT)) and in one input market (U.S.-U.K. international transport). In addition, we find that BT is among the most significant market participants in each of the relevant input markets (international transport between the United States and the United Kingdom, U.K. cable station access, U.K. backhaul, U.K. intercity transport, U.K. local terminating access and U.K. local originating access), and is a significant participant in the market for U.S.-U.K. outbound services.

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[103] As we observed in the *Bell Atlantic/NYNEX Order*, these capabilities and assets are similar to the factors used in cases applying the doctrine of actual potential competition. *See id.* at ¶ 64 & n.149.

[104] *Id.* at ¶ 65.

1. U.S. End-User Markets

a. Outbound International Services on the U.S.-U.K. Route

69. We first consider whether MCI and BT are market participants in any of the relevant downstream markets. The first market we consider is the market for outbound international services on the U.S.-U.K. route.

70. *MCI.* MCI is both an actual competitor and among the most significant participants in the market for U.S.-U.K. outbound calls. It is the second largest carrier on this route in terms of international message telephone service (IMTS) traffic billed in the United States. In 1995, the most recent year for which we have complete data, MCI had almost $120 million in retained revenues (total revenue minus payout to foreign carriers) for U.S.-U.K. services billed in the United States.[105] For the first quarter of 1997, MCI reports that it had $55 million in revenues on the U.S.-U.K. route.[106]

71. *BT.* BT is both an actual and a precluded competitor and a significant participant in the market for U.S.-U.K. outbound international calls. We base our findings upon the fact that BT's U.S. affiliate, BTNA, currently provides service on a resale basis. As we describe below, BT has been precluded from providing service on the U.S.-U.K. outbound route on a facilities basis.

72. BT's U.S. subsidiary, BTNA, is currently authorized to resell switched voice services (including resold switched private line services, commonly referred to as "international simple resale" or "ISR") on the U.S.-U.K outbound route.[107] BTNA currently has only a *de minimis* presence in the U.S.-U.K. outbound market, and primarily serves the business market. For the first quarter of 1997, BTNA had $1,021 total revenue and no retained revenue on the U.S.-U.K. route.[108]

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[105] 1995 Section 43.61 International Traffic Data Report at 20, Table A32 (Feb. 1997) (*1995 International Traffic Data Report*).

[106] Letter from Carol Schultz, Senior Attorney, International Regulatory Affairs, MCI to Peter Cowhey, Chief, International Bureau, FCC (June 30, 1997).

[107] *See supra* note 25.

[108] Letter from Cheryl Lynn Schneider, attorney, BTNA, to William F. Caton, Acting Secretary, FCC (July 28, 1997).

73. BTNA has applications pending before the Commission to provide facilities-based service between the United States and the United Kingdom as a non-dominant carrier.[109] BT currently is a precluded competitor for facilities-based services on the U.S.-U.K. outbound route.[110] BT has significant capabilities and incentives to enter the U.S.-U.K. outbound international services market. For example, BT has developed relevant network operating capabilities as a consequence of providing service on the U.K.-U.S. outbound route. With respect to the large international business market, BT also has some brand name recognition and reputation, as well as a small number of existing customer relationships, in the United States.

74. With respect to the mass market, however, BT lacks the necessary facilities, operational infrastructure, brand name recognition and reputation, and existing customer relationships to develop mass market retail capabilities on the U.S. end. In order to become among the most significant market participants, BT would need to make the costly investments necessary to develop a major presence in the provision of service to the U.S. mass market. Even if BT were to make such investments, it is unlikely that it would become among the most significant market participants given the greater capabilities and incentives of the other market participants discussed below.

75. *AT&T and Sprint.* In addition to MCI, AT&T and Sprint are interexchange carriers that are among the most significant market participants on this route. These three carriers together accounted for 97 percent of the IMTS traffic to the United Kingdom billed in the United States. In 1995, AT&T had a 63.2 percent share and Sprint had a 10.4 percent share on this route.[111] Both carriers thus have a substantial existing customer base on this route.

76. *BOCs and GTE.* The BOCs are precluded competitors and among the most significant participants in this market. These firms were barred from providing in-region long distance and international services until the passage of the 1996 Act. The BOCs remain precluded competitors for in-region U.S.-U.K outbound international service until they receive authority under Section 271 of the Communications Act to provide in-region long distance

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[109] *See supra* note 25.

[110] BT is a precluded competitor because, until last year, only BT and CWC (formerly Mercury) were legally permitted to hold U.K. international facilities licenses. Thus, the United Kingdom did not afford U.S. carriers the legal ability to enter the U.K. international facilities market, an important factor in our effective competitive opportunities analysis under Section 214. *See Foreign Carrier Entry Order*, 11 FCC Rcd at 3891.

[111] *1995 International Traffic Data Report* at Table E1. MCI's share of U.S.-U.K. outbound IMTS traffic was 23.7 percent. By contrast, for the same time period, the fourth largest competitor, WorldCom, had 2.6 percent of the traffic. *Id.*

services generally. All the BOCs have indicated, through public statements and regulatory filings, that they intend to provide in-region long distance services, which would presumably include service on the U.S.-U.K. outbound route. We expect that each of the BOCs ultimately will be authorized to provide in-region long distance services, including U.S.-U.K. outbound international services. For purposes of this proceeding, we will treat the BOCs collectively as a single, nation-wide in-region market participant.

77. Each of the BOCs has significant capabilities and incentives to provide in-region U.S.-U.K. outbound international service, both to the mass market and to large- and medium-sized business customers. The BOCs have critical resources that BT lacks. Through their current U.S. operations, the BOCs have high brand name recognition (at least in-region), good reputations in most cases, a large existing customer base, and an extensive operational infrastructure (both network and retail) that can be easily modified to handle U.S.-U.K. outbound calls. In providing international services, the BOCs would enjoy economies of scope throughout their retail and network operations. Although these firms in most cases do not currently own international transport capacity, we believe that they will be able to obtain such capacity in the near future.

78. GTE is an actual participant in this market and has many of the capabilities and incentives of the BOCs. We thus conclude that the BOCs and GTE are among the most significant participants in this market, for purposes of our analysis in this proceeding.

79. *Interexchange Carriers and CAPs.* There are also several hundred carriers that primarily resell the capacity of the largest interexchange carriers on this route. These include, among others, Cable & Wireless, ACC, Frontier, and Esprit. In addition, WorldCom[112] is the fourth largest facilities-based carrier on the U.S.-U.K. route.[113] Teleport Communications Group, a competitive access provider (CAP), is also an actual participant in the U.S.-U.K. outbound international services market. It currently provides service on a resale basis, but has applied for Section 214 facilities-based authority to serve this route. These carriers primarily serve the same business market that we could expect BT to serve were it to enter the U.S. market, and have an existing brand reputation and customer base in the large business market segment. Given their capabilities and assets, we believe that these interexchange carriers and CAPs would be as significant as BT in the serving the medium- and large-sized business market segment. There is no evidence, however, that these interexchange carriers and CAPs have the brand name recognition and reputation that are critical assets for offering services to

[112] On December 31, 1996, WorldCom and MFS Communications Company, Inc. (MFS Communications) merged. As a result, MFS Communications and its subsidiaries (including their U.S. and U.K. operations) are now wholly-owned subsidiaries of WorldCom.

[113] *See supra* note 111.

the mass market. We thus do not believe that these carriers are, or soon will be, among the most significant market participants on this route for the mass market.

80. *Satellite Service Providers.* Four satellite systems, PanAmSat, Orion, Columbia/TDRS, and the International Satellite Telecommunications Organization (INTELSAT), are actual competitors on the U.S.-U.K. route. These systems provide fixed-satellite services using geostationary-satellite orbit satellites.[114] To the extent these carriers provide services to end users, they primarily serve the large business market segment. Only a relatively small amount of voice and data services provided on the U.S.-U.K. route are provided by satellite service providers. The delay and echo inherent in satellite transmissions appear to make satellite capacity a less attractive medium for international transport on the U.S.-U.K. route. Thus, it appears that the preferred medium for voice traffic on this route is fiber optic cable.

81. We note, however, that a new generation of fixed-satellite service systems have been proposed in the Ka-band, providing greater opportunities for high speed transmission services.[115] The bandwidth in the Ka-band more than doubles the amount of bandwidth available in traditional C and Ku commercial bands,[116] providing many new opportunities for high speed, high bandwidth services. It is difficult to predict how these systems will develop,[117] and whether they will become significant competitors in the provision of basic voice and data services. There is the potential for new high-speed interactive digital voice, data, and video offerings, among other services,[118] although the introduction of such services to the public will take a significant amount of time. We thus do not believe that satellite

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[114] The term "fixed-satellite service" refers to the type of earth station used (*i.e.*, fixed-satellite service earth stations remain at a fixed point while transmitting or receiving signals to or from the satellite).

[115] The term "Ka-band" generally refers to the space-to-earth (downlink) frequencies at 17.7-20.2 GHz and the corresponding earth-to-space (uplink) frequencies at 27.5-30.0 GHz, or the "28 GHz band."

[116] The "C-band" generally refers to the 3400-4800/5850-7025 MHz frequency bands. The "Ku-band" generally refers to the 10.7-12.75/13.75-14.5 GHz bands.

[117] In July 1996, the Commission issued a *First Report and Order and Fourth Notice of Proposed Rulemaking* adopting, among other things, a final band plan for the Ka-band. Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed-Satellite Services, *First Report and Order and Fourth Notice of Proposed Rulemaking*, CC Docket No. 92-297, FCC 96-311 (rel. July 22, 1997).

[118] The International Bureau has licensed 13 operators proposing to provide such services as interactive digital voice, data, and video; electronic messaging; facsimile; video telephony; video conferencing; satellite news gathering; computer access; direct-to-home video and telemedicine. *Id.* at ¶ 19.

service providers are, or will soon be, among the most significant market participants in the provision of U.S.-U.K. outbound international services.

82. *Cable MSOs.* Incumbent cable multiple systems operators ("Multiple System Operators" or "MSOs") have facilities that are capable of being upgraded to provide local exchange and local exchange access services to residential and business customers.[119] These operators would then be in a position to provide international services, including U.S.-U.K. outbound international services. Given the new transatlantic cable capacity expected, these operators may also provide facilities-based international services on the U.S.-U.K. outbound international services route.

83. As we indicated in the *Bell Atlantic/NYNEX Order*, MSOs have name reputation and a reputation with their customers (although not a reputation for providing telecommunications services).[120] MSOs have the capabilities and incentives that potentially enable them to become significant market participants for providing local exchange and exchange access services to residential and small business customers sometime in the future. Technical and financial constraints, however, may limit their ability to enter end-user mass markets as quickly as other market participants. We thus find that MSOs are not among the most significant market participants in the U.S.-U.K. outbound international services market.[121]

84. *Mobile Telephone Service Providers.* Providers of mobile telephone service via radio consist primarily of cellular and broadband personal communications services licensees, but also include digital specialized mobile radio providers. In the *Bell Atlantic/NYNEX Order*, we explained that mobile telephone service providers are currently positioned to offer products that largely complement, rather than substitute for, wireline local exchange.[122] We concluded that mobile telephone service providers lack the requisite incentives and access to facilities that allow them to compete effectively in the local exchange markets examined.[123] We have no indication that the mobile telephone service providers' incentives and access to facilities are any greater with respect to international services, including U.S.-U.K. outbound international services. We thus conclude that, for purposes of our analysis in this case,

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[119] *See Bell Atlantic/NYNEX Order* at ¶ 85.

[120] *See id.*

[121] *Id.*

[122] *Id. at ¶ 89.*

[123] *Id.*

mobile telephone service providers are not yet significant market participants in the U.S.-U.K. outbound international services market.

85. *Conclusion.* In conclusion, we find that MCI is among the most significant market participants in the market for U.S.-U.K. outbound international services. We also find that, although BT is a precluded competitor in the provision of facilities-based services on this route and has the capabilities and incentives to be a significant market participant, it is unlikely that BT would become among the most significant market participants, especially in serving the mass market. There are at least four other firms that have greater capabilities and incentives than BT to be among the most significant market participants. With respect to service provided to large business customers, where BT has the most potential significance, there are also additional competitors serving that market segment that are at least as significant as BT is likely to be in that market segment.

b. U.S. Local Exchange and Exchange Access Markets

86. We next consider whether MCI and BT are likely to be market participants in the U.S. local exchange and exchange access markets and whether they are likely to be among the most significant market participants.

87. *MCI.* In the *Bell Atlantic/NYNEX Order,* we found that MCI is both a precluded participant and among the most significant market participants in the provision of U.S. local exchange services to mass market customers. We found that MCI had the capabilities and incentives to acquire a critical mass of customers and to do so relatively quickly because it has an existing brand reputation and customers. We also noted that MCI has announced that it will invest $2 billion to enter markets for local exchange and exchange access services.[124] We thus find that, for purposes of this proceeding, MCI is a precluded participant and among the most significant market participants in the market for local exchange services.

88. *BT.* Like MCI, BT could be considered to be a precluded competitor in the U.S. local exchange market. In the *Bell Atlantic/NYNEX Order*, we concluded that the universe of the most significant market participants in the provision of U.S. local services to mass market customers in one particular local service market (LATA 132), was limited to an in-region BOC (NYNEX), an out-of-region adjacent BOC (Bell Atlantic) and the three largest interexchange carriers (AT&T, MCI and Sprint). We also found that although there were

[124] *Id.* at ¶ 82 & n.178.

many other companies that were either precluded competitors or actual market participants, none of them could be considered a most significant market participant.[125]

89. We believe it is unlikely that BT would be as significant a market participant in the provision of U.S. local exchange services as any of the most significant market participants identified in the *Bell Atlantic/NYNEX Order*. With respect to the provision of local services to mass market customers, the focus of the *Bell Atlantic/NYNEX* proceeding, BT lacks brand reputation and existing customers. With respect to the provision of local services to large- and medium-sized businesses, BT lacks customers and facilities which other market participants already have.[126] There is no reason to believe that our findings with respect to BT's role would be different for any other U.S. local exchange and exchange access market. Consequently, we conclude that, although BT may be a precluded competitor in the markets for U.S. local exchange services, it is not likely to be a significant market participant in any U.S. local exchange market absent the proposed merger.

c. Global Seamless Service Market

90. We next consider BT's and MCI's participation in the global seamless service market.

91. *BT/MCI Alliance.* BT and MCI are actual competitors and together are one of the most significant participants through Concert Communications in the market for global seamless services. Concert Communications, the applicants' current joint venture, develops global seamless service products that are distributed by BT and MCI and their partners around the world. This joint venture is one of only a handful of major competitors world-wide in the global seamless service market.

92. *Other Alliances.* In addition to Concert Communications, there are several other global seamless service providers in this market. They consist mainly of various carrier alliances, including AT&T's alliance (with WorldPartners) and Sprint's alliance with DT and FT (Global One).[127] Each of these alliances has a number of partners world-wide that distribute its services. Although this market is still in the early stages of development, we find that Concert Communications is a significant market participant in this market, as are WorldPartners and Global One.

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[125] *Id.* at ¶ 94.

[126] *Id.* at ¶ 53.

[127] *See Sprint Declaratory Ruling*, 11 FCC Rcd at 1864.

2. Input Markets

93. We next examine whether BT and MCI are among the most significant market participants in the relevant input markets.

a. International Transport for the U.S.-U.K. Route

94. The first relevant input market for which we identify market participants is the market for international transport for the U.S.-U.K. route. Our analysis focuses on the provision of international transport on a facilities basis.

95. *Background.* U.S. carriers seeking to terminate traffic in the United Kingdom and points beyond rely on submarine cables and satellite systems. The U.S.-U.K. route currently is served by a number of submarine cables owned by consortia of international telecommunications carriers (TAT-8, -9, -11, and -12/13), two private cables (PTAT and CANTAT-3), and satellite systems (INTELSAT, PanAmSat, Orion and Columbia/TDRS).[128]

96. Most cable facilities are jointly owned by a consortium of U.S. and foreign telecommunications carriers. Cable owners may purchase capacity from the consortium on a half-circuit or whole-circuit basis. To provide service on the cable, a half-circuit owner on one end of the cable matches with a half-circuit owner on the other end of the cable. Whole circuit owners may provide end-to-end service (assuming they have obtained appropriate authorizations on both ends). Non-owners may acquire capacity on this cable by either leasing or obtaining indefeasible rights of user (IRUs) from consortium owners.[129] For new entrants hoping to compete on an end-to-end basis, the burden of having to transact with two carriers holding "matching" half-circuits slows entry into international service and generates market power for incumbent carriers.

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[128] Cable & Wireless, Inc., *Order, Authorization and Certificate*, 11 FCC Rcd 16486, 16496 (Int'l Bur., rel. 1996) (*C&W Order*) (citing Joint Application for a Cable Landing License to Construct and Operate a High Capacity Digital Submarine Cable Network between the United States, the United Kingdom and France, *Cable Landing License*, 8 FCC Rcd 4808 (1993) (*TAT-12/13 Cable Landing License*)).

[129] "An IRU interest in a communications facility is a form of acquired capital in which the holder possesses an exclusive and irrevocable right to use the facility and to include its capital contribution in its rate base, but not the right to control the facility or, depending on the particular IRU contract, any right to salvage . . . . The IRU is conveyed by a facility co-owner to a carrier that did not elect to become a facility co-owner or that as a facility co-owner did not purchase sufficient capacity to meet its projected demand over the life of the facility." Reevaluation of the Depreciated-Original-Cost Standard in Setting Prices for Conveyances of Capital Interests in Overseas Communications Facilities Between or Among U.S. Carriers, *Report and Order*, 7 FCC Rcd 4561, 4561 n.1 (1992).

97. The majority of transatlantic traffic is transmitted over submarine cable facilities. Although satellite capacity is used for international transport, this capacity currently does not appear to be an adequate substitute for submarine cable capacity. As we noted above in paragraph 80, the delay and echo inherent in satellite transmissions appear to make satellite capacity a less attractive medium for international transport on the U.S.-U.K. route.

98. Among the cable facilities that are currently in service, the TAT-12/13 submarine cable system is considered "state-of-the-art" because its self-healing ring configuration permits instantaneous self-restoration.[130] It is also the most cost-effective submarine cable between the United States and Europe,[131] and the largest currently operating cable, with five gigabits (Gbits) of capacity for traffic, approximately as much capacity as all of the other currently operating cables, combined.[132]

99. *BT.* BT is both an actual participant and among the most significant providers in this market. BT currently owns approximately 38 percent of the TAT-12/13 half-circuits on the U.K.-end of the cable, far more than any other carrier.[133] Overall, BT is the second largest owner of capacity on TAT-12/13 with a total ownership share of 17.2 percent. It also owns significant shares in other common carrier transatlantic cables.[134] In addition, BT is the

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[130] *TAT-12/13 Cable Landing License*, 8 FCC Rcd at 4808.

[131] DT comments at 7. *See also* Sprint comments at 10.

[132] *See* TeleGeography 1996/97, Global Telecommunications Traffic Statistics & Commentary, ed. Gregory C. Staple at 61 (TeleGeography 1996/97); U.K. Government reply comments at 29.

[133] *See* TAT-12/13 Revised Schedules (effective June 9, 1997) (June TAT-12/13 Schedules). According to the most recent schedule of circuit allocations, BT has 509 of the 1336 U.K.-end half-circuits allocated between the Mastic Beach, New Jersey and Land's End, England system interfaces, and 624 of the 1674 U.K.-end half-circuits allocated between the Green Hill, Rhode Island and Land's End system interfaces. Thus, in total, BT has approximately 38 percent of the U.K.-end half circuits (1133 out of the total 3010 half-circuits). By comparison, CWC has only eight percent of the U.K.-end half-circuits (66 of the 1336 U.K.-end half-circuits allocated between Mastic Beach and Land's End, and 169 of the 1674 U.K.-end half-circuits allocated between Green Hill and Land's End). AT&T is the second largest owner of U.K.-end half-circuits with 13 percent of the total U.K.-end half-circuits (225 of the 1336 U.K.-end half-circuits allocated between Mastic Beach and Land's End, and 167 of the 1674 U.K.-end half-circuits allocated between Green Hill and Land's End). *Id.*

[134] TAT-8 Construction and Maintenance Agreement (C&MA) (revised schedule B-1, effective Oct. 16, 1989); TAT-9 C&MA (revised schedule B, effective Sept. 28, 1994); TAT-11 C&MA (revised Schedule B, effective Sept. 14, 1995).

U.K. signatory to INTELSAT, which BT and other carriers use to provide service over satellite facilities.[135]

100. *MCI.* MCI is the third largest overall owner of capacity on TAT-12/13 with a total ownership of approximately 16.8 percent.[136] It also owns significant shares in other transatlantic cables.[137]

101. *Other Competitors.* Until December 1996, carriers other than BT and CWC[138] were precluded from owning and operating capacity on the U.K.- (or eastern) end of the U.S.-U.K. route.[139] A number of competitors are seeking to provide new international transport facilities on this route. For example, the International Bureau has authorized the construction and operation of four new cable systems on the U.S.-U.K. route, two of which will commence

[135] *See supra* ¶ 80. The courts have held that Comsat, acting in its capacity as U.S. signatory to INTELSAT, has immunity from liability under the U.S. antitrust laws. *See Alpha Lyracom Space Communications, Inc. (d/b/a Panamsat Corp) (Alpha Lyracom) v. Communications Satellite Corp. (Comsat)*, 1990 WL 135637 at 6-7 (S.D.N.Y.) *affirmed in part and reversed and remanded in part, Alpha Lyracom v. Comsat*, 946 F.2d 168 (2d Cir. 1991); *cert. denied, Alpha Lyracom v. Comsat*, 502 U.S. 1096 (1992); *see also Alpha Lyracom Space Communications, Inc. et al. v. Comsat*, 1996 WL 897666 (S.D.N.Y.), *affirmed, Panamsat v. Comsat*, 113 F.3d 372 (2d Cir. (N.Y.)). We do not believe that this type of immunity is either intended or appropriate for BT's operations in the U.S. market. Nevertheless, we are conditioning this grant on BT waiving any claim to immunity under the court's decision in *Alpha Lyracom v. Comsat* as it may apply to BT's provision of services in the United States. It is not our intention that such waiver affect BT in carrying out its responsibilities as the U.K. signatory to INTELSAT outside the jurisdiction of the United States, or that such waiver affect any sovereign immunity claims to which BT would be otherwise entitled.

[136] June TAT-12/13 Schedules. AT&T is the largest overall owner of TAT-12/13 with a 22.7 percent ownership share. Prior to the U.K. Government's liberalization of the U.K. international facilities-based service market, MCI and AT&T could hold, but not use, the U.K.-end of their full TAT-12/13 circuits. Thus, these holdings were only complementary assets of MCI and AT&T. Upon licensing in December 1996, these companies' U.K. subsidiaries could begin using these assets, theoretically allowing MCI and AT&T to provide end-to-end facilities-based IMTS service for the first time on the U.S.-U.K. route.

[137] TAT-8 C&MA (revised schedule B-1, effective Oct. 16, 1989); TAT-9 C&MA (revised schedule B, effective Sept. 28, 1994); TAT-11 C&MA (revised Schedule B, effective Sept. 14, 1995).

[138] CWC was formerly known as Mercury. Several months ago, Mercury completed a merger with three cable companies (Bell Cablemedia, NYNEX CableComs, and Videotron) to create Cable & Wireless Communications (CWC). CWC is majority-owned by Cable & Wireless plc.

[139] In the United States, any carrier authorized to provide international facilities-based service could own and use half circuits on the U.S.- (or western) end.

service in 1998.[140] Gemini, a private cable owned by WorldCom and Cable & Wireless (C&W), is expected to be operational in mid-1998.[141] SSI Atlantic Crossing L.L.C. (SSI), a non-carrier company, is building another private cable system, to be known as the "Atlantic Crossing" cable system. This private cable system will consist of a fiber optic ring between the United States, the United Kingdom, and Germany. SSI anticipates that the U.S.-U.K. portion of the system will be in service in May 1998.[142] Thus, C&W, WorldCom and SSI also are among the most significant competitors of international transport on this route. In addition, AT&T and Sprint, which have significant ownership interests in the international consortia cable on the route, are also among the most significant competitors.[143]

b. U.K. Cable Landing Station Access

102. The second relevant input market for which we identify market participants is market for U.K. cable landing station access, including digital access cross-connection switches (DACS).[144] As described below, almost all international calls to the United Kingdom are transported over submarine cable facilities and enter the United Kingdom at cable landing stations, where they are connected to backhaul facilities by means of digital access cross connection-switches. Newly licensed U.K. facilities-based carriers must access their cable circuits through such cable stations. Although other facilities licensees may construct, own and operate a cable landing station and DACS, the owner of cable landing stations associated with the largest cables will have control over most U.K. international traffic.

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[140] *See* Atlantic Express, *Cable Landing Licenses*, 11 FCC Rcd 7033 (Int'l Bur., Telecom. Div., 1996); MFS Globenet, Inc., *Cable Landing License*, 11 FCC Rcd 12732 (Int'l Bur., Telecom Div. 1996) *modified by* MFS Globenet, Inc., & Cable & Wireless, plc, *Modification of Cable Landing License*, DA 96-2151, File No. SCL 96-004(m) (change in ownership of the Gemini cable system); *C&W Cable Landing License*; SSI Atlantic Crossing L.L.C., *Cable Landing License*, DA 97-2034, SCL-97-002 (Int'l Bur., Telecom Div., rel. Sept. 23, 1997) (*Atlantic Crossing Cable Landing License*).

[141] *See* MFS Globenet, Inc. Opposition to Petition to Deny, File No. SCL-96-004 at 3 (filed Aug. 1, 1996).

[142] *See* AT&T Corp., News Release, "AT&T to Build World's Most Powerful Undersea Network" (March 24, 1997). SSI was formerly owned by AT&T.

[143] As noted above, ownership of capacity in TAT-12/13 is fairly concentrated among the three largest owners (AT&T, BT and MCI). Before the merger, the market for capacity on TAT-12/13, as measured by the Herfindahl-Hirschman Index (HHI), would be characterized as "moderately concentrated" under the *1992 Horizontal Merger Guidelines*. The HHI would be at least 1,236, within the "moderately concentrated" range. *See 1992 Horizontal Merger Guidelines*, 57 Fed. Reg. at 41558 § 1.5.

[144] DACS are used to translate optical signals emanating from the submarine cable into signals that can be carried over backhaul facilities.

103. *BT.* BT is both an actual participant and among the most significant participants in this market. BT is the sole owner and operator of the majority of U.K. cable landing stations, including the station at Lands' End, where TAT-12/13 lands in the United Kingdom.

104. *MCI.* MCI is a precluded competitor in this market, but is not likely to be a significant competitor. Although MCI has large traffic flows on the U.S.-U.K. route, there is no evidence that MCI would enter this market, for example, by constructing and operating its own cable station. Nor is there any evidence in the record that MCI possesses capabilities or incentives that exceed those of any number of precluded competitors that might enter this market.

105. *Other Competitors.* CWC is the only firm other than BT that currently owns cable landing stations in the United Kingdom. A new cable station is under construction in the United Kingdom by the owners of the Atlantic Crossing cable system.[145] The construction of cable landing stations and DACS, like the construction of the submarine cables to which they correspond, requires significant sunk costs. Other market participants may arise as new cables are constructed.

c. U.K. Backhaul Market

106. The third relevant input market for which we identify market participants is the U.K. backhaul market. "Backhaul" describes a high capacity private line used to carry traffic between a cable landing station, where the vast majority of international calls enter the United Kingdom,[146] and a carrier's international switch or point of presence in the United Kingdom.

107. *BT.* BT is both an actual competitor and among the most significant participants in this market. Until recently, only BT and CWC provided backhaul lines used for delivering incoming international traffic to an international switch or point of presence, or delivering outbound U.K. international traffic to cable landing stations for conveyance overseas.[147]

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[145] Letter from Claire Calandra, Secretary, SSI Atlantic Crossing L.L.C., to William F. Caton, Acting Secretary, FCC, File No. SCL-97-002 (Sept. 5, 1997) (indicating that the Atlantic Crossing cables will terminate at a newly constructed cable station located at Whitesands in Cornwall, United Kingdom). The owners of the Gemini cable system, WorldCom and C&W, plan to use an existing cable station owned by CWC.

[146] The remaining calls are carried by satellite systems, and enter through satellite earth stations.

[147] BT offers several interconnection options for international circuits terminating at its cable stations. In a typical arrangement, "backhaul" circuits can be leased from the cable station at Land's End cable station to the customer's switch nearest BT's international gateway switch in London.

108. *MCI.* MCI does not compete in the provision of U.K. backhaul, nor is there any evidence in the record it plans to enter this market. In addition, there is no evidence that MCI possesses capabilities or incentives that are greater than those of several actual competitors in this market. We thus find that MCI does not appear to be a likely significant participant in this market.

109. *Other Competitors.* Two of the newly-licensed international facilities competitors, Energis and WorldCom, built out backhaul facilities from Lands' End (the site of the TAT-12/13 landing station) within three weeks of the grant of their international facilities licenses.[148] U.K. domestic and international licensees have or can apply for "code powers," which enable them to apply to courts for "compulsory wayleaves" (similar to eminent domain powers) and provide for a streamlined procedure for dealing with all relevant U.K. authorities. The U.K. Government asserts that the practical effect of the code powers is that backhaul can be constructed quickly.[149] The U.K. Government expects alternative backhaul to be built to almost all U.K. cable landing stations within the next year.[150] Given the relative ease of entry, other actual market participants providing international services on the U.S.-U.K. route have incentives to enter this market.

d. U.K. Intercity Transport

110. The fourth relevant input market for which we identify market participants is the U.K. intercity transport facilities market. In order for international calls to terminate in the local exchange of the destination market, the calls must be transported from an international gateway switch or point of presence[151] using intercity transport facilities. Intercity transport is provided within the United Kingdom by a number of facilities-based providers for eventual termination with the end-user customer. The U.K. market does not have the same clear separation between long distance and local carriers that currently characterizes the U.S. market.

111. *BT.* BT is both an actual competitor and among the most significant participants in this market. Several commenters asserted that BT has the only ubiquitous intercity network in the United Kingdom and that BT could use it to discriminate against

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[148] U.K. Government reply comments at 25.

[149] *Id.* at 26.

[150] *Id.*

[151] BT has several international gateway switches in the United Kingdom, including one in London.

unaffiliated carriers.[152] BT/MCI and the U.K. Government counter that BT faces considerable competition in the intercity market.[153] Although BT faces increasing competition in this market, it appears that it still controls the only ubiquitous network in the United Kingdom.

112. *MCI.* MCI is neither an actual nor a precluded competitor in the U.K. intercity transport market. We find no evidence in this record that, absent the merger, MCI might consider entering this market, or that it possessed capabilities or incentives that were superior to other actual participants and potential entrants into this market. We thus find that MCI is not a significant participant in this market.

113. *Other Competitors.* The primary facilities-based carriers for U.K. intercity transport are BT and CWC. BT/MCI note that CWC has built the most extensive competing network to the principal centers for long distance and international traffic; its all-digital U.K. trunk network extends to over forty-two U.K. cities and towns.[154]

114. Energis, a subsidiary of the National Grid Company (NGC), and Scottish Telecom have used utility rights of way to construct extensive optical transmission systems and have installed several switches. In addition, the network of Racal-BR Telecommunication Limited (BRT) reaches into many U.K. communities and BRT already provides dark fiber to other operators.[155] Similarly, the U.K. affiliates of AT&T, Sprint (now Global One), and WorldCom hold domestic facilities licenses. AT&T is assembling a nationwide network by installing high speed switches in major metropolitan areas and leasing high capacity intercity circuits.[156] WorldCom's network already connects major metropolitan areas in the United Kingdom.

115. We thus conclude that there are several other competitors, with capabilities and incentives at least equal to MCI, that have entered, or appear likely to enter, this market.

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[152] *See, e.g.,* AT&T comments at 2-3, 7-8; DT comments at 2; Energis comments at 1; FT comments at 7-8; Frontier comments at 2; Sprint comments at 2, 13-14; WorldCom comments at 2, 18.

[153] *See infra* ¶¶ 113-114.

[154] BT/MCI application at 38.

[155] *Id.* at 39-40. Racal Electronics plc purchased BRT in 1995 from British Railways. *Id.*

[156] *Id.* at 40-41.

e. U.K. Local Termination Access Market

116. The fifth relevant input market we consider is the U.K. termination access market. Local termination services are used to terminate U.S.-outbound calls in United Kingdom.

117. *BT.* BT is an actual competitor and among the most significant participants in the market for U.K. local termination services. With the only ubiquitous network in the United Kingdom, BT provides the overwhelming majority of U.K. termination services. Indeed, OFTEL, the U.K. telecommunications regulator,[157] currently imposes price caps on BT which classify BT's local termination service as a "non-competitive" service, one which is unlikely to become competitive in the foreseeable future.[158]

118. *MCI.* MCI does not participate in this market, which has been open to new competitors since 1992. We are unaware of any plans by MCI to enter this market. Entry would require significant assets in order to construct facilities, particularly given the absence of local loop unbundling and resale in the United Kingdom. MCI would also face high hurdles in terms developing brand reputation. We thus find that MCI is not among the most significant competitors in this market.

f. Local Originating Access in the United Kingdom

119. The sixth relevant input market for which we examine market participants is the U.K. local originating access market. Local originating access services in the United Kingdom are essential for the provision of global seamless service, which includes the ability to place local and long distance (including international) calls in the United Kingdom as well as in the United States. Without the ability to offer local originating access service in the United Kingdom, carriers are not able to provide global seamless service.

120. *BT.* BT is both an actual competitor and among the most significant participants in the market for U.K. local originating access. BT/MCI and the U.K. Government argue that BT faces increased competition in this market.[159] However, based on

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[157] *See infra* ¶ 243.

[158] OFTEL, *Network Charges from 1997* (May 1997) (*OFTEL 1997 Network Charges)* (unless otherwise noted, OFTEL documents are available at <http:\\www.oftel.gov.uk\>).

[159] *See infra* ¶ 122.

the number of exchange lines, BT's share of the U.K. local exchange market for both business and residential service is 91.4 percent.[160]

121. *MCI.* MCI does not participate in the U.K. local originating access market. Given the significant commitment required to enter this market, MCI is unlikely to be a significant market participant.

122. *Other Competitors.* The U.K. Government notes that cable telephony firms are now capable of providing local exchange service to one-third of the U.K. population and are required to offer service to 70 percent of the U.K. population by the year 2000.[161] From July to September 1996, the combined total of CWC's and the other cable companies' shares of the U.K. local exchange market was 7.7 percent. During the same period, all other market participants had 0.9 percent shares combined.[162] WorldCom and COLT have constructed fiber optic facilities in urban areas, particularly London. Ionica, the most prominent fixed wireless provider of local service, is required by the terms of its license to offer service to 75 percent of England and Wales over the next three years.[163] In Scotland, two other companies will be providing similar fixed wireless services and other fixed access operators are also planning services.[164] We thus conclude that there are several other competitors, with capabilities and incentives at least equal to MCI, that have entered, or appear likely to enter, this market.

D. Analysis of Horizontal Competitive Effects

1. Overview

123. In this section, we assess the possible *horizontal competitive effects* of the merger. As previously discussed,[165] a merger can have a horizontal competitive effect on a particular relevant market if the merger would increase or slow the decrease of unilateral or coordinated market power compared with the competitive conditions that would exist absent

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[160] OFTEL, *Market Information Update* 9, 12 (Apr. 1997) (*OFTEL Market Information Update).*

[161] U.K. Government reply comments at 10.

[162] As of September 1996, BT owned 27,496,000 exchange lines; CWC, 303,000; cable operators, 2,017,000 combined; others (including fixed wireless providers), 256,000. *OFTEL Market Information Update* at 9, 12.

[163] U.K. Government reply comments at 10.

[164] *Id.*

[165] *See supra* ¶ 36.

the merger.[166] We note that these horizontal competitive effects can occur regardless of whether the relevant market is an "end-user" market or an "input" market.

124. A merger may have an anti-competitive, or pro-competitive, horizontal effect on a relevant market that is dominated by a single firm possessing *unilateral market power.* For example, if a relevant market is concentrated and dominated by one of the merging companies, then the merger could result in the merged firm's gaining increased unilateral market power or slowing the decline of unilateral market power.[167] As a result, the merged company may have an increased ability, compared with competitive conditions in the absence of the merger, to raise price above competitive levels, reduce the quality of the relevant product or service, reduce innovation, or restrict output.[168] Alternatively, if neither of the merging firms has the ability to raise prices unilaterally or reduce output or quality in a relevant market dominated by a third firm, and if, as a result of the merger, the merged entity either enters the relevant market or becomes a stronger and more significant competitor in the relevant market, then the merger may have the effect of reducing the market power of the dominant firm in that market. In this case, the merger would have a pro-competitive horizontal effect.

125. Similarly, a merger may have an anti-competitive, or pro-competitive, horizontal effect on a relevant market that is concentrated and dominated by a small group of firms that collectively exercise market power through *coordinated interaction.*[169] A merger may have an anti-competitive horizontal effect if it "increases the potential for coordinated interaction by firms remaining in the post-merger market."[170] For example, a merger is likely to have an anti-competitive horizontal effect if both merging firms were among a limited

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[166] As previously discussed, in analyzing mergers, we will consider horizontal competitive effects not only as of the time the merger is consummated, but also during the period after the 1996 Act and the WTO Basic Telecom Agreement have been more fully implemented. *See supra* ¶ 38.

[167] *See Bell Atlantic/NYNEX Order* at ¶¶ 101-102; *1992 Horizontal Merger Guidelines*, 57 Fed. Reg. at 45558-45559 § 2.2.

[168] We note that the presence of regulation will not necessarily prevent the merged company from exercising its unilateral market power. For example, even if the merged firm were subject to price cap regulation, which prevented it from raising the price of the relevant product, this would not prevent it from either slowing the rate at which it otherwise would reduce the price of the relevant product or service, or reducing the quality of the relevant product or service.

[169] As previously indicated, "coordinated interaction" is defined as "actions by a group of firms that are profitable for each of them only as a result of the accommodating reactions of the others." *See supra* ¶ 37 (quoting *1992 Horizontal Merger Guidelines*, 57 Fed. Reg. 45557-45558 § 2.1).

[170] *Bell Atlantic/NYNEX Order* at ¶ 121.

number of significant market participants in the market,[171] because, "[a]s the number of most significant market participants decreases, all other things being equal, the remaining firms are increasingly able to arrive at mutually beneficial market equilibria, to the detriment of consumers."[172] Although less likely, a merger can also have a pro-competitive horizontal effect to the extent that it prevents or limits coordinated interaction. For example, if one of the merging firms is an actual competitor that is a "maverick firm,"[173] then the merger may make it a stronger competitor that can better disrupt coordinated interaction by other firms in the market.[174]

a. End-User Markets

126. We first examine whether the merger of BT and MCI will enhance competition in the relevant end-user markets, compared with the competitive conditions that would exist absent the merger. We reiterate that we are concerned with horizontal competitive effects, both at the time the merger is consummated and during the period after the 1996 Act and the WTO Basic Telecom Agreement have been more fully implemented.

127. *U.S. Local Exchange and Exchange Access Services.* Consistent with our conclusion in the *Bell Atlantic/NYNEX Order,* we find that MCI, along with AT&T and Sprint, are likely to be among the most significant market participants in the U.S. local exchange markets.[175] As we observed in the *Bell Atlantic/NYNEX Order,* each of the three

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[171] A merger may also have an anti-competitive horizontal effect if the merging firms were precluded competitors but were among the firms that were most likely to be the most significant market participants in the relevant market.

[172] *Id.* In that order, we explained that:

> In general, increased concentration facilitates coordinated interaction for at least three reasons: (1) with fewer firms, the relative gains from 'cheating' against the other firms decrease (as the market share increases there are fewer customers to win from other providers); (2) it becomes easier to detect deviations from the coordinated conduct; and (3) other firms are more able to punish cheating by a deviant firm through retaliation. *Id.* (footnote omitted).

[173] The *1992 Horizontal Merger Guidelines* defines "maverick firms" as "firms that have a greater economic incentive to deviate from the terms of coordination than do most of their rivals (e.g., firms that are unusually disruptive and competitive influences in the market)." *1992 Horizontal Merger Guidelines*, 57 Fed. Reg. at 45557-45558 § 2.12. *See also 1997 Horizontal Merger Guidelines Revisions* at 1.

[174] For example, to the extent the merger increases the maverick firm's capacity, it also increases the merged firm's incentive and ability to act as a maverick and cheat on the agreed price. *See id.*

[175] *Bell Atlantic/NYNEX Order* at ¶ 82.

largest interexchange carriers is "among the most significant market participants because each has the capabilities and incentives to acquire a critical mass of customers in the relevant markets and to do so relatively rapidly."[176] Moreover, MCI has announced its intention to invest $2 billion to finance its entry into the local exchange markets.[177] On the other hand, there is no evidence in the record that BT has either the specific capabilities necessary, or the incentives to enter, the U.S. local exchange markets. Accordingly, we find that the merger of BT and MCI will not eliminate significant capabilities or assets from the U.S. local exchange markets. To the contrary, we find that the merger is likely to enhance MCI's position as among the most significant market participants in that market. More specifically, we believe that access to BT's financial and technical resources will only strengthen MCI's position as a major participant in U.S. local exchange markets. Accordingly, we find that the merger, by strengthening MCI as a local market participant, is likely to reduce the market power of incumbent local exchange carriers, compared to what it would be absent the merger, and thus is likely to enhance competition in this relevant market.

128. *U.S.-U.K. Outbound International Services.* We concluded above that the market for U.S.-U.K. outbound international services can be distinguished between mass market (including residential and small business) customers and large- and medium-sized business customers.[178] With respect to mass market customers, we find that MCI is an actual competitor in the market for U.S.-U.K. outbound international services, and that it is among the most significant participants in that market. We further find that AT&T and Sprint are also actual competitors with respect to this market segment and that they, likewise, are among the most significant market participants in this market. In addition, we find that the BOCs, although currently precluded competitors, have the capabilities and incentives to become among the most significant market participants in this segment.[179] By contrast, we conclude that BT is unlikely to become among the most significant market participants serving the mass market for U.S.-U.K. outbound international services, because it lacks any of the capabilities, operational infrastructure, brand name recognition and reputation among U.S. customers, and existing customer relationships to attract large numbers of customers quickly. Accordingly, we find that the elimination of BT as a possible competitor in the mass market segment for U.S.-U.K. outbound international service is unlikely to affect competition adversely either in the near term or in the foreseeable future.

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[176] *Id.*

[177] *See supra* ¶ 87.

[178] *See supra* ¶ 50.

[179] As discussed above, *see supra* ¶ 78, we also find GTE among the most significant market participants in this market segment.